

REQUEST FOR ACTION

To: Mark Leary, Acting Director
CalRecycle

From: Mark de Bie, Chief *mdB*
Permitting & Assistance Branch
Permitting & Certification Division

Request Date: July 15, 2011

Decision Subject: Concurrence on Proposed New Full Solid Waste Facilities Permit for Gregory Canyon Landfill, SWIS No. 37-AA-0032

Action By: July 15, 2011

Summary of Request: This is a request that the Acting Director take action on a new Solid Waste Facilities Permit for the Gregory Canyon Landfill, SWIS No. 37-AA-0032, located in San Diego County, as proposed by the San Diego County Local Enforcement Agency (LEA). Staff's findings and recommendations relative to the proposed action are set forth in the Permitting and Assistance Branch Staff Report dated July 11, 2011, attached hereto.

The proposed permit was received on May 16, 2011. Action must be taken on this proposed permit no later than July 15, 2011. If no action is taken by July 15, 2011, the Department will be deemed to have concurred with the issuance of the proposed permit.

Recommendation: Based on our review and analysis of the submitted permit package, staff recommends the Acting Director concur with the issuance of the permit. All of the required submittals and findings required by the Integrated Waste Management Act (IWMA), including those set out in California Code of Regulations, Title 27, Section 21685, have been made. The Revised Final Environmental Impact Report (RFEIR) was certified and a Statement of Overriding Considerations was adopted by the LEA, acting as the Lead Agency under the California Environmental Quality Act (CEQA), on May 31, 2007. The LEA as Lead Agency adopted three Addenda to the RFEIR between 2008 and 2011. The RFEIR identified unavoidable significant and cumulative impacts to Traffic and Circulation, Air Quality, Archeological and Cultural Resources, Ethnohistory and Native American Interests, Aesthetics, and Noise and Vibration. These findings are summarized in the Permitting & Assistance Branch Staff Report, attached. The Department's findings required under CEQA and staff's analysis and recommendations are set out in the attached Staff Report. The documents and other evidence on which staff's findings are based are contained in the facility files.

Staff had not included in its Report a detailed analysis of the oral and previously submitted written comments as the Acting Director had attended the June 27, 2011 public meeting and staff had discussed and reviewed the oral comments and written comments with the Acting Director prior to submitting the Staff Report. Staff also note that many of the issues provided by commenters were similar to those previously provided to the LEA, and had been adequately summarized and addressed by the LEA in the Staff Report attachment.

Staff offer the following assessment of the issues raised in correspondence received after the posting of the Staff Report, taking into account the statutory basis for either concurring in, or objecting to, a solid waste facilities permit:

--Issues relative to past solid waste facility permit actions, past LEA actions or payments to the LEA by the facility owners/operators associated to regulatory activities are not relevant to Staff's recommendation consistent with the requirements of Public Resources Code Section 44009.

-- Staff continues to find that the JTD for the site is complete and correct. Although there are some details that are not consistent within the JTD and/or between that document and the CEQA record, staff find that it is clear which parameters ultimately reflect the appropriate regulatory controls. For example, the ultimate depth of excavation is indicated in the record to be 380 msl as well as 400 msl. However, the permit does not allow waste to be placed within 5 feet of ground water. This is the controlling requirement relative to the depth of waste and therefore the ultimate depth of excavation. Parameters relative to waste fill stability are adequately addressed in the design authorized by the permit. As the project is reviewed by Regional Water Quality Control Board staff, the design may be altered to meet Board requirements. Changes, if they occur, may require that the JTD be amended. These amendments may affect other aspects that are within the LEA and Department's regulatory responsibility generating further regulatory modifications. For example, in the event that Regional Board review results in a lesser excavation then the availability of cover may become an issue that will need to be addressed by the operator to the LEA's satisfaction.

--A concern was expressed about activities required by the permit outside of the landfill area of 308 acres identified in the permit. Staff finds that this is not an inconsistency. The 308 acres is where landfill specific activities will occur but it is not a limit on the LEA's regulatory oversight. Permit condition 17g addresses activities in proximity to the permitted boundary. This construction of permit requirements is consistent with other solid waste facility permits that address activities within and outside of the permitted boundary

--Staff continues to find and affirm that the facility as described in the record will meet state requirements. The facility, if developed and operated as described will be compliant with cover, fire control, waste acceptance requirements, and all monitoring and reporting requirements.

--Staff continues to find and affirm that all of the proposed conditions in the permit are appropriate and consistent with state requirements, including conditions 17 a, c, d, g, h, k, and l.

--Staff finds that the permit appropriately addresses issues that are within the LEA's and the Department's authority. The LEA has not, as is appropriate, included permit requirements for aspects of the project outside its authority, such as local land use requirements, source of waste and waste hauling, and aspects of the project that are within the authority of other local, regional or State agencies.

--Concerns about the 1994 local initiative Proposition C and its relationship to this permit have been expressed by interested parties. On one hand, the validity of the initiative as the means for siting this project has been called into question. Alternatively, it is argued that, although invalid, provisions of Proposition C should be 'enforced' in this permit. Fundamentally, the local initiative process is separate and distinct from state requirements. A local initiative, like Proposition C, cannot impose requirements upon the state process. Thus, the staff determination that provisions of Proposition C need not be in the solid waste facility permit recognizes the legal

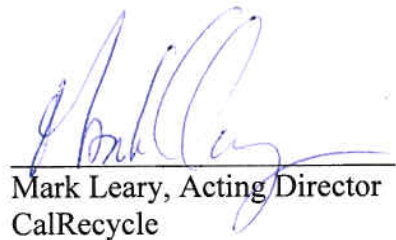
limits of the initiative. Similarly, the Department has no authority to base its decision about concurring in this permit on an assertion that a legally valid local initiative is flawed. These two ideas are not contradictory as Proposition C and the Department's permitting authority are separate and distinct. The reference in the original staff report to giving substantial weight to the initiative is related to the Statement of Overriding Considerations, not the Department's permitting authority.

Acting Director Action

I certify that I have reviewed and considered the information in the RFEIR and the Addenda prepared for this proposed Solid Waste Facilities Permit, including without limitation the environmental effects of the project as described in the RFEIR and the Addenda to it. I note for the record that I do not agree with the staff's conclusion that there is no evidence of an environmental justice issue with respect to this site. Clearly, the RFEIR has established the project's unavoidable significant and cumulative impact on the Ethnohistory and Native American Interests of the Pala Indians. However, despite the fact that I recognize the existence of this issue, and that it was not fully mitigated in the CEQA process, it is not within the jurisdiction or authority of the Department to object to a proposed permit based upon this issue, and as a Responsible Agency under CEQA, our ability to add mitigations to a permit are limited to those matters within our authority, therefore, it cannot be a basis for my decision in this matter. I adopt the findings and determinations set out in the Staff Report and this Request for Action on the grounds stated therein, including without limitation the adequacy of the environmental documents prepared by the LEA, acting as Lead Agency, under CEQA and the proposed permit's compliance with the requirements of the IWMA, Department regulations and CEQA. I adopt as the Department's own the findings made by the LEA, acting as Lead Agency, as required by CEQA Guidelines Section 15091. I adopt as the Department's own the Statement of Overriding Considerations adopted by the LEA, acting as Lead Agency, pursuant to CEQA Guidelines Section 15093.

Therefore, on the basis of the information, analysis and findings set out in the Department Staff Report and in this Request for Action, I concur in the issuance of the new Solid Waste Facilities Permit for the Gregory Canyon Landfill as proposed by the LEA.

Dated: 7/15/11



Mark Leary, Acting Director
CalRecycle

Attachments: Proposed Solid Waste Facilities Permit
Permitting & Assistance Branch Staff Report

